

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

JUL 21 1994  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 ) GC Docket 92-52  
Reexamination of the Policy ) RM-7739  
Statement on Comparative ) RM-7740  
Broadcast Hearings ) RM-7741

To: The Commission

COMMENTS OF J & M BROADCASTING CO., INC.

J & M Broadcasting Co., Inc. (J & M), by its attorney, respectfully offers its comments on the comparative criteria to be used by the Commission in contested comparative broadcast proceedings for new commercial stations. This filing is in response to the Commission's Second Further Notice of Proposed Rulemaking, FCC 94-167, released June 22, 1994.

J & M has experienced the Commission's comparative process directly. In 1988, J & M applied for a new FM station at Carmel, California, File No. BPH-880211MM. It went through a comparative hearing in MM Docket 90-48, and was granted the construction permit by the Administrative Law Judge based on its superior qualitative integration enhancements. Both the Review Board and the full Commission affirmed this decision. J & M received its construction permit, and began operating the station, current call letters KBOQ-FM, in December 1993.

One of the competing applicants for this facility, Highlands Broadcasting Co., Inc., filed a notice of appeal

with the U. S. Court of Appeals for the District of Columbia Circuit. Before briefs were filed with the Court, the Bechtel II decision was issued. Subsequently, the case was remanded to the Commission for its action consistent with the Bechtel holding. J & M not only has an interest in the outcome of the instant proceeding, but is able to provide the Commission with insight from the personal experiences of its owners.

The criteria which is adopted as a result of the instant proceeding should be clear to the applicant, and capable of objective application. To the extent possible, it should also be factually based, for good intentions and promises of future acts are too easily made, and are too difficult to test, to be useful to the Commission.

Stoddard Johnston, one of J & M's principals, brings his vast experience in the broadcast industry to this issue. Mr. Johnston has owned and operated both radio and television stations, in both large and small markets. Its other principal, Sherrie McCullough, had no direct broadcast experience prior to KBOQ-FM going on the air. However, she has been fully immersed in the operations of this station, and offers insight based on her personal experience in going through the start-up of this new radio station.

The Commission's 1965 Policy Statement recognized past broadcast record as a significant comparative factor, apart from integration. J & M believes that past record is often an excellent predictor of future performance. In practice, the

Commission has been reluctant to delve into this area. An applicant seeking this credit had to meet a threshold showing, which required a comparison of his station with other stations in the same market. The Commission focussed on such items as the amount of news and public affairs programming presented by the stations compared. This tended to favor a station with a news or news/talk format at the expense of one which played more music. The Commission has never directly favored a particular format, and there is no basis on which to conclude that one format serves the public better than another one. If there was no showing in this area, the Commission assumed the station's performance was average, and the past broadcast record of the applicant did not figure in the comparative evaluation.<sup>1</sup>

The Commission should review the performance of every station previously owned by an applicant. There is no basis for an assumption of average performance. An applicant seeking a new station, who previously owned or operated a broadcast station, should be measured by the performance of that prior station. It should be permitted to demonstrate why that performance may receive greater or lesser weight, as a

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<sup>1</sup> In comparative renewal cases, the record of the renewal station was examined to determine whether the station deserved a "renewal expectancy", and if so, to what extent. However, the Commission previously used the standard comparative criteria, including integration, in deciding a challenge to a renewal applicant where that applicant failed to produce evidence of its past record, and perforce was given no renewal expectancy. WIOO, Inc., 95 FCC 2d 974 (1983).

result of circumstances not currently present, or for other valid reasons. For example, performance with a station in a market of much different size, or in a different part of the country, may be less relevant than performance in the market applied for. There may have been constraints on the prior station's performance, such as other partners, or monetary limitations, which affected the applicant's ability to operate the station in the desired manner. These elements may be introduced into evidence and weighed by the Administrative Law Judge.

Based on its own experience in starting a new station in a difficult economy, J & M believes that integration of ownership into management generally provides for a superior station. Its two principals have been integrated into station management, and have made a difference because of their active involvement and their personal contacts in the community. J & M began broadcasting soon after an existing station in the market, having absentee ownership, was sold and changed format. J & M adopted the abandoned format for its station. As a result of its owners direct involvement in station operations, J & M has been able to make appointments for the first time with a number of local companies which did not respond to sales calls from the previous station. J & M's in-roads into these companies result from their personal familiarity with the companies' owners and managers. In general, one of J & M's owners will make the initial telephone

call and set up an appointment. He/she will bring a member of the station's sales staff to this meeting, and the sales person will follow through from that point. Some of the companies who have responded to contact by J & M's owners are:

Quail Lodge/Quail Meadows  
The Pebble Beach Company  
Hahn Estate Wineries  
Durney Vineyards  
Cinderella Carpets  
Community Hospital of Monterey Peninsula  
Fox and Carscadon

As a result of its ability to attract these and other advertisers, J & M is able to better serve its listeners. Without adequate funds, the station's programming and its involvement in the community necessarily suffers. Also, it is J & M's experience that banks and other lending institutions prefer to lend money to businesses whose owners are personally involved in a daily basis, thus making funds more accessible to these integrated owners.

J & M's experience strongly emphasizes the importance of having the owners of a station directly involved in its operation. When this occurs, the owners are able to make a better determination regarding current and future decisions in all areas. They have direct and personal knowledge, and do not have to rely solely upon reports from employees, reports which may be incomplete or even erroneous.

J & M therefore urges the Commission to study the value of continuing to use integration as a comparative criterion before discarding it altogether. However, if integration is

no longer to be a comparative criterion, J & M supports the continued use of what previously comprised integration's qualitative enhancements. In this regard, it is clear that minority ownership merits significant weight. Congress and the courts have agreed that the Commission assist minorities to acquire broadcast properties by providing them with special benefits. Such policies as distress sales and tax certificates have increased the number of stations owned by minorities. It would make no sense to discontinue the award of credit to minorities applying for new stations while they receive special consideration in acquiring existing stations.

J & M also believes that a preference for female ownership is justified, as there remains a dearth of female owners. Commission investigation into this area is likely to provide a sufficient factual basis to justify awarding a preference for female ownership.

The majority of applicants for new stations do not have a past broadcast record. In such cases, the Commission must consider their personal attributes. Based on the experiences of its principals, J & M believes that there are a number of factors which contribute to a station best fulfilling its obligation to serve the public interest.

If the owner of a station is familiar with the city of license and the service area, the station will likely be more responsive to the needs and interests of its listeners. Even if the owner is not involved in station management on a day-

to-day basis, he/she will nevertheless set overall station policy, and will have ultimate decision-making responsibility. Area familiarity enables the owner to personally ensure that the station is addressing the needs of the service area. Without that knowledge, the owner must rely on the reports of others.

Under the 1965 Policy Statement, the Commission assumed that local residence automatically led to area knowledge. Generally, opposing applicants were not permitted to challenge this assumption at hearing. Also, the Commission gave no local residence credit to one who lived just beyond the service area of his proposed station, although that residence might be within the service area of another applicant, who proposed different facilities. That strict definition of local residence was arbitrary.

Local residence should be defined as residence in the metropolitan area, the Arbitron rating area, or other appropriate region as determined by the ALJ. It enhances an applicant's demonstrated knowledge of the area for such knowledge would likely be based upon daily exposure to community events and controversies. A mere academic study of the area, as an applicant with no prior ties to the area would have done as part of his ascertainment process in the late 1970s and early 1980s, should not overcome the comparative credit available to a knowledgeable a local resident. Also, a local resident owner is more easily accessible to members of

the community who may desire to contact the owner rather than deal with an employee manager.

Applicants should receive additional comparative credit for involvement in civic and community affairs. The fact that an applicant has devoted him or herself to community betterment in the past is a strong indication that the applicant will operate the station to serve the community. Under the 1965 Policy Statement, the Commission included civic involvement as part of the local residence of an applicant. J & M believes that credit for an applicant's prior civic participation in the area of the station merits its own separate comparative credit, as it is predictive of station performance. No credit should be awarded for merely paying dues to an organization, or attending a monthly luncheon. Active participation, e.g. as a member of the board of directors and/or an officer or committee chairman, should be required for an applicant to receive credit in this area. Applicants whose local service extends to state and national participation should also be credited for such indirect community service.

Applicants with broadcast experience should continue to receive comparative credit. However, the experience should be tied more closely to the facility sought. The history of broadcasting is rife with cases where a successful manager of a major market station failed as a small market owner. Some examples, from the personal knowledge of Stoddard Johnston



include the following. Names and stations will be supplied upon request.

(1) The former general manager of two separate major market television stations acquired a small market radio station. He was unable to operate the station profitably and had to sell it at a loss within a year.

(2) A national advertising agency executive bought a small market radio station. He nearly went bankrupt because of losses at the station, which was sold at a loss. As an aside, this station is now leading the market under different ownership.

(3) An announcer for a major market radio station bought a small market station. Having no experience in sales, he hired a general sales manager who took advantage of the situation to enrich himself at the station's expense. The owner was forced to sell this station.


These examples show that broadcast experience must be relevant to the specific station involved. Major markets operate much differently than small markets and experience in the former may be of little advantage to an owner of a small market radio station. Thus, if an applicant seeks credit for past broadcast experience, he should be required to demonstrate the applicability of his experience to the station sought. Experience of dubious value should not be credited.

J & M also believes that the Commission should consider an applicant's business experience. A station will not be

able to serve the public if it is not financially successful. To be successful, it must be operated in a business-like manner. At present, it appears that over half the radio stations on the air are losing money. If that situation is not reversed, they will be forced off the air, to the detriment of the public. Thus the Commission should give credit to applicants with a business background. One with a history of successfully operating a business, one who successfully started up a business from scratch, is more likely to make the new broadcast station a success.

Accordingly, the comparative criteria should be established in accordance with the proposals discussed above.

Respectfully submitted,  
J & M BROADCASTING CO., INC.

By   
Jerrold Miller  
Its Attorney

July 22, 1994

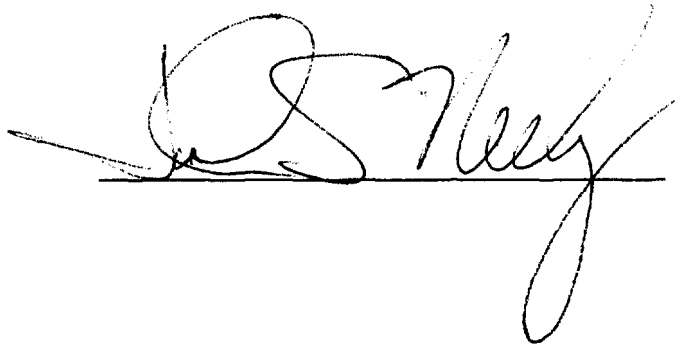
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CERTIFICATE OF SERVICE

I hereby certify that on this 22 day of July, 199<sup>4</sup>, a copy of the foregoing document was placed in the United States mail, first class postage prepaid, addressed to the following:

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A handwritten signature in dark ink, appearing to read "D. Hunsaker", is written over a horizontal line. The signature is stylized with large loops and a long, sweeping tail that extends downwards and to the right.